

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

BEUMER CORPORATION and )  
BEUMER KANSAS CITY, LLC, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
PROENERGY SERVICES, LLC and )  
WESTERN SURETY COMPANY, )  
 )  
Defendants. )

Case No. 4:16-mc-9022

**MOTION OF PLAINTIFFS BEUMER CORPORATION  
AND BEUMER KANSAS CITY, LLC TO  
CONFIRM FINAL ARBITRATION AWARD**

In accordance with the parties' written agreement, a contractual dispute between plaintiffs Beumer Corporation and Beumer Kansas City, LLC (collectively "Plaintiffs") and defendants ProEnergy Services, LLC ("ProEnergy") and Western Surety Company ("Western Surety") was recently submitted to binding arbitration. The parties jointly selected Gregory Cokinos, a lawyer with the firm of Cokinos, Bosien & Young in Houston, to serve as the sole arbitrator. The arbitration proceeding was administered by the American Arbitration Association ("AAA").

Mr. Cokinos held evidentiary hearings in the arbitration proceeding on April 4-8, May 9-11, and May 16, 2016. The hearings were held at the offices of Lathrop & Gage in Kansas City, Missouri. All parties except Western Surety were represented by counsel at the hearing.

On September 14, 2016, Mr. Cokinos issued an Interim Amended Award in the arbitration proceeding.<sup>1</sup> In the Interim Amended Award, Plaintiffs were jointly awarded the sum of \$891,382.53 from ProEnergy and Western Surety, jointly and severally:

Respondent Beumer Corporation, aka Beumer Kansas City LLC is hereby awarded the sum of **\$699,702.39** from ProEnergy Services, LLC and Western Surety, jointly and severally, plus pre-judgment interest running from **August 31, 2013** to the date of the interim award at the rate of nine percent pursuant to Missouri law (RSMo Section 408.020) in the total amount of **\$191,680.14**, plus post-judgment interest running from the date of the interim award until paid at the rate of nine percent pursuant to Missouri law (RSMo Section 408.020).

In the Interim Amended Award, Mr. Cokinos also found that Plaintiffs were entitled “to an award of reasonable attorney’s fees, costs and expenses,” the amount of which was to be determined by Mr. Cokinos if the parties were unable to agree on the amount:

Respondent Beumer Corporation is also entitled to an award of reasonable attorneys’ fees, costs and expenses. Counsel is to advise the AAA within 30 days of the date of this Interim Award of any agreement on the award of fees, costs and expenses. In the event of an agreement as to the award of fees, costs and expenses, this Interim Award will be converted to a Final Award. If after 30 days of the date of this Interim Award, the parties are unable to reach agreement on the award of fees, costs and expenses, then a hearing will be scheduled to make that determination after which time this interim Award will be converted to a Final Award.

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<sup>1</sup> A copy of the Interim Amended Award is attached as Exhibit C to Plaintiff’s suggestions in support of this motion.

The parties were unable to agree on the amount of attorney's fees, costs and expenses to be awarded to Plaintiffs. Hence, Mr. Cokinos held a hearing on the attorney's fee issue on October 19, 2016.

On November 18, 2016, Mr. Cokinos issued his Final Award in the arbitration proceeding.<sup>2</sup> In the Final Award, Plaintiffs were awarded an additional \$916,027.09 – representing Plaintiffs' reasonable and recoverable attorneys' fees, costs and expenses in the arbitration proceeding – from ProEnergy:

Accordingly, ProEnergy shall pay to Beumer the sum of \$916,027.90. This amount is in addition to the sums previously awarded in the Interim Award dated July 27, 2016 as amended and corrected in the Interim Amended Order dated September 14, 2016.

To date, neither ProEnergy nor Western Surety has tendered payment to Plaintiffs. Indeed, based on ProEnergy's response to Plaintiffs' inquiries, there is some doubt whether ProEnergy and/or Western Surety will honor and voluntarily comply with the arbitration awards. Hence, it is necessary to confirm and obtain the entry of judgment on the Final Award to enable Plaintiffs to commence execution proceedings.

Accordingly, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 to 16, Plaintiffs move the Court to issue an order that (i) confirms the Final Award entered by arbitrator Gregory Cokinos in this matter on November 18, 2016; (ii) enters judgment in favor of Plaintiffs, and against ProEnergy and Western Surety, jointly and severally, in the principal sum of \$891,382.53, plus interest on this amount at the rate of nine percent (9%) per annum since September 14, 2016, which totals \$16,924.06 as of November 30, 2016 and will increase at the

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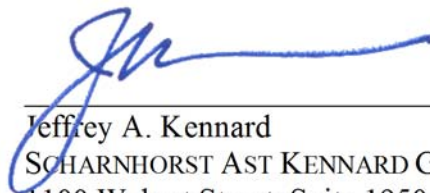
<sup>2</sup> A copy of the Final Award is attached as Exhibit D to Plaintiff's suggestions in support of this motion.

rate of \$219.79 per day thereafter; (iii) enters judgment in favor of Plaintiffs and against ProEnergy in the principal sum of \$916,027.09, plus interest on this amount at the rate of nine percent (9%) per annum since November 18, 2016, which totals \$2,710.44 as of November 30, 2016 and will increase at the rate of \$225.87 per day thereafter; (iv) awards Plaintiffs the costs of this action; and (v) awards Plaintiffs such additional relief the Court deems just and equitable.

In support of this motion, and in compliance with Local Rule 7.1, Plaintiffs have contemporaneously filed suggestions in support of this motion.

Dated: November 30, 2016

Respectfully submitted,



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